

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

ANNUAL COMPLIANCE REVIEW, 2020

Docket No. ACR2020

**UNITED STATES POSTAL SERVICE RESPONSE TO UNITED PARCEL
SERVICE INC.'S MOTION REQUESTING ACCESS TO NON-PUBLIC
MATERIALS UNDER PROTECTIVE CONDITIONS**

(January 19, 2021)

Pursuant to 39 CFR § 3011.301(c), the United States Postal Service (Postal Service) files this response to United Parcel Service Inc.'s (UPS) Motion Requesting Access to Non-Public Materials Under Protective Conditions (UPS' Motion).¹ The Postal Service urges UPS to withdraw its request to access certain non-public materials filed by the Postal Service in Docket No. ACR2020, insofar as these materials include information related to third-party foreign postal operators.

On January 11, 2021, UPS filed its Motion requesting, among other things, access to certain of the Postal Service's non-public library references from Docket No. ACR2020 (USPS-FY20-NP2, USPS-FY20-NP3, USPS-FY20-NP7, USPS-FY20-NP8, USPS-FY20-NP9, USPS-FY20-NP10, USPS-FY20-NP11, USPS-FY20-NP12, USPS-FY20-NP13, USPS-FY20-NP14, USPS-FY20-NP19, USPS-FY20-NP20, USPS-FY20-NP21, USPS-FY20-NP22, USPS-FY20-NP23,

¹ United Parcel Service, Inc.'s Motion Requesting Access to Non-Public Materials under Protective Conditions, Docket No. ACR2020 (January 11, 2021).

USPS-FY20-NP24, USPS-FY20-NP30).² Of these non-public library references, USPS-FY20-NP2, USPS-FY20-NP3, USPS-FY20-NP7, USPS-FY20-NP9, USPS-FY20-NP14, USPS-FY20-NP22, USPS-FY20-NP23, and USPS-FY20-NP24 contain commercially-sensitive information related to third-party foreign postal operators, which under good business practice would not be publicly disclosed.³ It is especially difficult for foreign entities with logistical, legal, and language obstacles to participate timely and directly in Commission proceedings, even when receiving notice of the instant motion. However, UPS' Motion places their commercial data at an unfair competitive risk. Despite the only one-week deadline under the Commission's rules for responses to this Motion,⁴ foreign postal operators continue to object to UPS' request to access this type information.⁵ In lieu of directly participating in this docket, several operators submitted letters expressing their objections to UPS' Motion. The Postal Service has offered to share this information with the Commission in the interest of informing its decision with respect to UPS' Motion. Specifically, the Postal

² Although UPS specifically requested access to "non-public library references from Docket No. ACR2020 (USPS-FY19-NP2, NP3, NP7, NP8, NP9, NP10, NP11, NP12, NP13, NP14, NP19, NP20, NP21, NP22, NP23, NP24, NP30)" the Postal Service assumes that UPS meant to request access to the non-public folders that the Postal Service filed in Docket No. ACR2020 and are identified as "USPS-FY20."

³ This information normally would be exempt from mandatory public disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3), (b)(4). The Postal Service incorporates by reference its arguments, and the identified harms that would arise from disclosure of these materials, which are contained in the Postal Service's application for non-public treatment in this docket. See USPS FY2020 ACR, Attachment Two, Application of the United States Postal Service for Nonpublic Treatment of Materials.

⁴ 39 CFR § 3011.301(c).

⁵ In Docket No. ACR2019, the Postal Service submitted objections from the designated postal operators of Canada (Canada Post Corporation), Germany (Deutsche Post), and the United Kingdom of Great Britain and Northern Ireland (Royal Mail Group) to a similar request filed by UPS. See United States Postal Service Response to United Parcel Service Inc.'s Motion Requesting Access to Non-public Material under Protective Conditions, Docket No. ACR2019 (January 22, 2020), at 2 and Attachments 1-3.

Service attaches six such letters, Attachments 1 – 6, from the designated postal operators of Canada (Canada Post Corporation), China (China Post Group Co., Ltd.), Germany (Deutsche Post AG), Belgium (bpost SA/NV), Thailand (Thailand Post Co., Ltd.), and the United Kingdom of Great Britain and Northern Ireland (Royal Mail Group Ltd.) to this Response. The Postal Service accordingly requests that the Commission take into account this correspondence from foreign postal operators, and further urges UPS to reconsider and withdraw its request for access to USPS-FY20-NP2, USPS-FY20-NP3, USPS-FY20-NP7, USPS-FY20-NP9, USPS-FY20-NP14, USPS-FY20-NP22, USPS-FY20-NP23, and USPS-FY20-NP24.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

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January 19, 2021



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January 14, 2021

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**RE: Motions for Access to Non-public Material Containing Third Party Information in
PRC Docket No.: ACR2020**

Dear Mr. Raykher,

Canada Post Corporation (CPC) appreciates the efforts of USPS to oppose those elements of the above Motions pertaining to third-party information. Given the magnitude of the parcel flows between USPS and CPC; and the highly competitive nature of the United States/Canada cross-border parcels business; and the seriousness and significance of the impact on CPC's revenues and legitimate commercial interests of improper disclosure of its commercially-sensitive information, which CPC strongly believes would not be adequately protected by the Protective Conditions proposed by the above Motions, especially considering the lack of enforcement tools for CPC; CPC strongly urges the PRC to order that access should be denied to the non-public material set forth in PRC Docket No. ACR2020.

Yours sincerely,

A handwritten signature in black ink, appearing to be "D. Power", written over a horizontal line.

Darren Power
Legal Counsel

DP/cll



CHINA POST GROUP Co., Ltd.

中国邮政集团

TO	FROM
United States Postal Service	China Post Group Co., Ltd.
The Postal Regulatory Commission of the U.S.	Date: 14 January, 2021
YOUR REFERENCE NUMBER	OUR REFERENCE NUMBER

Subject: Response Letter to the UPS's Motion Requesting Access to Non-public Materials under Protective Conditions(January 11, 2021)

Dear Rick Brown and dear all,

Wishing you and your colleagues all the best wishes in 2021!

Thank you for your email. We noticed the UPS's motion to the PRC requesting access to non-public materials under protective conditions, which including commercially sensitive data relates to China Post. After internal review urgently, as concerned party of this motion, we'd like to share our position as below:

We strongly opposes to disclose commercially sensitive data relates to our Post to any third parties without our consent, with following reasons:

- China Post have proprietary interests in related materials sought by UPS, which including our Post's commercially sensitive information regarding revenue, cost, weight, shape and volume data for inbound and outbound products. After prudent impact assessment, once these commercially sensitive data be disclosed, it will cause negative impacts on our business development.
- As agreed in our bilateral agreement with USPS, related information were considered as commercially sensitive information and should be protected from disclosure to third parties. We understand that certain information maybe filed in the Annual Compliance Report by USPS, but we do not agree to disclose these information as publicly or to any other third parties.

Thus, we kindly ask USPS to help convey our position to the PRC: we strongly oppose to disclose our Post's commercially sensitive information to any third parties, and would like to ask the PRC to treat our Post's commercially sensitive information (including but not limited to revenue, cost, weight, shape and volume data)as non-public material believed to be protected from disclosure.

Thank you for your kind support in advance. Should you have any questions or need further information, please feel free to contact us.

Kind regards,
China Post International Business



Deutsche Post AG, Headquarters
Import, Negotiations & International Relations

Deutsche Post



Deutsche Post AG Headquarters 53250 Bonn Germany

United States Postal Service

To whom it may concern.

Your reference

Our reference 361

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Date 2021-01-15
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Subject **ACR2020 UPS' Motion for Access**

Dear Sir/Madam,

We have been informed that United Parcel Service, Inc. (UPS), has filed a motion for access to non-public materials that were identified as containing third party information that could be considered commercially sensitive. One of the documents concerned by this motion is said to contain "specific information regarding revenue, cost, weight, shape, and volume data for inbound and outbound products" from other parties which are signatory to commercial agreements with USPS.

We would like to object to the disclosure of such information, for the following reasons:

- Firstly, the fact that other competitors of USPS seem not to request access to these data shows that such access is not required to make informed comments in the Commission's fiscal year ("FY") 2020 Annual Compliance Determination ("ACD") proceeding, which UPS states as the reason why access to the data is being requested.
- Secondly, since UPS is a globally active competitor of one or more third parties affected here, including Deutsche Post DHL Group, these parties' commercial interests can be severely jeopardized by UPS or its advisors gaining knowledge about details of these parties' activities, volumes, volume profiles, prices etc. This risk of commercial interests being jeopardized goes beyond the business on the tradelane into and out of the USA, but has an impact also on markets outside the USA.

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Date 2021-01-15
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Subject ACR2020 UPS' Motion for Access



- Thirdly, making such detailed, commercially sensitive information available to UPS or their advisors could lead to a situation where signatories to agreements with the USPS might refrain from entering into agreements with USPS in the future, due to the underlying risks of sensitive information being made available to competitors. This could lead to lower service quality, lower flexibility, lower revenue, higher cost etc. for USPS, with the related impacts on USPS customers and perhaps the US taxpayer.

Thank you for your consideration.

Yours sincerely,

i.V. Stefan Alfter
Vice President



United States Postal Service

Mr Jason Bloom

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UNITED STATES

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Zaventem, January 15th, 2021
Our reference : IR/NDV/2021001
Your reference : ACR2020 - UPS - Motion for Access

Dear Sir

Following up on your notification of the Request for access by UPS to the US postal regulator to confidential information filed by USPS with its regulator in December 2020 and in particular access to the "International Cost and Revenue Analysis (ICRA Report)", bpost SA/NV ("bpost") responds as follows.

bpost agrees to the disclosure of the requested information but only to UPS's outside counsel and consultants identified in Exhibit 1 of UPS's January 11, 2021 Motion Requesting Access to Non-Public Material Under Protective Conditions ("Motion"). The requested information is competitively sensitive information of bpost and should not be disclosed to UPS, particularly to anyone with current or recent responsibility for UPS's competitive decision-making in relation to competing activities.

While the Protective Conditions Statement annexed to the Motion already incorporates the concept of precluding access by anyone involved in competitive decision-making/in a position to gain competitive advantage, it does appear to permit access by other individuals within UPS. bpost objects to this. bpost's consent to the sharing of its data extends only to UPS's external advisors, which is consistent with the overarching scope of UPS's Motion (Motion, p. 2 - specifying that access is sought for UPS's "outside counsel and consultants only" (emphasis in the original)).

We thank USPS for notifying us on this potential issue, and request USPS to convey our objections.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Nadine Devisch', with a stylized flourish at the end.

Nadine Devisch
Director International Relations



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Bangkok, 18 January 2021

Reference No. THP/IS 052 /2021

Mr. Richard Brown
Manager of International Policy and Business Development (A)
International Policy and Business Development
United States Postal Service
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UNITED STATES OF AMERICA

Subject: ACR2020 UPS' Motion for Access

Dear Mr. Brown,

This refers to your email dated 13 January 2021 informing us of UPS's request for non-public documents. In this regard, Thailand Post (THP) strongly recommends rejecting such a query due to its containing confidential data of other posts. Since UPS does not sign some NDA with those posts, UPS should not be allowed to access to such data.

With best regards.

Yours sincerely,

(Yinna Kongcharoen)

Vice President of International Business System Department

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By Email only (anthony.f.alverno@usps.gov)

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14 January 2021

Dear Mr Alverno

Royal Mail Response to UPS Motion (filing 115800, dated 11 January 2021) in the Postal Review Commission's Annual Compliance review 2020

I write on behalf of Royal Mail Group Limited (**Royal Mail**), the UK's Designated Postal Operator for UPU purposes and the UK's universal postal service provider.

Royal Mail has reviewed the motion lodged by UPS (filing 115800, dated 11 January 2021) in the Annual Compliance Review 2020 (the "**Motion**"). The Motion requests access to certain non-public materials contained within the USPS FY2020 Annual Compliance Report filed by USPS with the Postal Regulatory Commission in December 2020. It also requests access to use data obtained in earlier years for the purposes of comparison with any new data obtained.

Royal Mail objects to the Motion and asks that the Postal Review Commission does not permit the disclosure sought.

This is because, Royal Mail submits, the data is highly commercially sensitive and disclosure of the information is likely to have a detrimental effect on Royal Mail as it will provide postal industry competitors (of which UPS is one) with information that could harm Royal Mail's legitimate commercial interests. There is intense competition in the delivery of mail to and from the UK, including relative to the US.

Royal Mail's competitors do not and should not have access to data concerning the exchange of postal articles, packets and parcels by and between Royal Mail and USPS, including information about volumes, types, weights, sizes, costs, charges, revenues, discounts, delivery timetables, performance targets and measurements and/or customer details.

Royal Mail Group

It should also be noted that UPS lodged a similar motion last year, which was granted, releasing equivalent material for the preceding 12-month period. As a result, disclosure this year will enable trend analysis to be conducted (which the Motion expressly states is the intention of the receiving parties), further jeopardising the business of Royal Mail.

Though the Motion seeks disclosure for named individuals only there is a risk that though the actual data is not shared, the comments which are derived from it and which may be shared with UPS will allow extrapolation which discloses the detail of the data to UPS and, perhaps, others.

The Motions seeks to suggest that UPS and its advisors cannot provide comments to the PRC upon USPS's annual filing without access to this information, but does not explain what additional work this information will enable. Royal Mail also does not understand the need for UPS's advisors to access this information to comment on the compliance determination and does not consider that the Motion adequately deals with this question.

Royal Mail therefore, respectfully requests that the Motion is not granted and that the information sought is not provided to UPS or its outside counsel and consultants.

Please do let us know if we can assist further.

Yours Sincerely

For and on behalf of Royal Mail Group Limited



Rina Newman

Senior Legal Advisor